IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1081 OF 2003
in
SPECIAL CIVIL APPLICATION NO 14580 of 2003
with
CIVIL APPLICATION 7610 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIYEDAHMED S HADDAD OR HIS SUCCESSOR IN OFFICE

Versus

CHANDRIKABEN DINESHBHAI SHAH

Appearance:
1. LETTERS PATENT APPEAL No. 1081 of 2003
MR MAULIN R RAVAL for Appellant No.
MRS KANAN R SHAH for Respondent No. 1-10
MR RAVINDRA SHAH for Respondent No. 1-10
RULE SERVED for Respondent No. 11-14

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 03/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Present respondents No.1 to 10 approached this Court by way of Special Civil Application No.14580 of 2003 under Article 226, 227 of the Constitution against the action of the present Appellant Bank - original respondent No.1 of the writ petition in sealing their residential premises and prayed that the same may be declared without jurisdiction and it may be quashed and set aside by issuing writ or any type of writ or direction. It is also prayed in the main petition that the impugned attachment notice dated 1.10.2003 (Annexure : D), dated 3.10.2003 (Annexure : E) and 3.10.2003 (Annexure : F) be also quashed and set aside. In the said writ petition, initially the Notice was ordered to be issued to the present Appellant - Bank and after hearing the learned Counsel for the parties Jayant Patel, J. by speaking order dated 14.10.2003 admitted the writ petition i.e. Special Civil Application No.14580 of 2003 and fixed it for final disposal on 14.2.2004 and by way of interim order the action taken by the Bank for sealing of the premises in question shall stayed and suspended on condition that the original petitioners deposit an amount of Rs.50,000/- within a period of one week from the date of the order with the Bank. On depositing the said amount of Rs.50,000/- the Bank was directed, by way of mandatory injunction, to remove its seals within 24 hours, failing which the petitioners were given liberty to remove the seals. While granting this interim relief the learned Single Judge himself clarified that the Bank shall be at liberty to proceed for execution of the Judgment and Award of the Board of Nominee in accordance with law, including the sale of the property in question, unless there is any prohibitory order passed by the competent forum staying the execution of the Judgment and decree of the Board of Nominee. It was also clarified by the learned Single Judge that the order passed by him shall not come in the way of the parties in Appeal, filed by the original petitioners, pending before the tribunal, and the Tribunal was given liberty to decide Appeal, in accordance with law. This order is challenged in this Appeal by the Appellant Bank - original respondent No.1.

2. Shri Raval, learned Counsel appearing for the Appellant Bank frankly stated at the Bar that as per mandatory direction issued by the learned Single Judge the original petitioners, on depositing Rs.50,000/-, removed the seal. Thus, the mandatory interim direction issued by the learned Single Judge stands complied with. In that view of the matter we are of the considered opinion that, without expressing any opinion on legality

and validity of the order passed by the learned Single Judge, which is challenged in this Appeal, this Appeal can be disposed of by making suitable observations, when the Appellant - Bank has already started with the execution of the Judgment and Award passed by the Board of Nominee, as stated at the Bar by learned Counsel Shri Ravindra Shah for the respondents No.1 to 10 - original petitioners.

3. It may be stated that Shri Raval has brought to our notice that whenever the Bank tried to execute the Judgment and Decree passed by the Board of Nominee, the present respondent Nos.1 to 10 - original petitioners always tried to obstruct by all means including writing threatening letter to the Bank Official. Though the learned Single Judge made it clear while granting mandatory interim relief in favour of the original petitioners, the bank is not in a position to execute the Judgment and Award passed by the Board of Nominee in its favour. Shri Raval also submitted that though the learned single Judge made it clear that the Appeal filed by the present respondents No.1 to 10 before the Tribunal be decided in accordance with law, the same is not so far decided. Therefore, the Tribunal be directed to decide the Appeal within time bound program as early as possible and not later than 30.9.2004.

4. We are told that though the competent Tribunal is constituted it is not functioning smoothly because of certain reasons for which this Court has to intervene and to pass certain orders regarding the appointment of the President of Tribunal. Be that as it may. In view of this, there is no question of issuing any direction to the Tribunal to decide the Appeal as early as possible within the time bound program latest by 30.9.2004 as suggested by Shri Raval for the Appellant Bank as it would be an exercise in futility. Such direction could have been issued only if the Tribunal was actually functioning.

5. It is true that though by way of clarification the learned Single Judge made it clear way back on 14.10.2003 while admitting the writ petition and granting mandatory interim relief in favour of the original petitioners that the Bank may proceed with the execution of the Judgment and Award passed by the Board of Nominee, but so far the bank is not in a position to execute the same for number of reasons. It is also true that though the learned Single Judge admitted the main petition on 14.10.2003 and fixed it early for final disposal on 18.2.2004 in view of mandatory injunction granted by him,

but so far the hearing of the main writ petition could not take place for some or the other reason.

6. In view of the above and having regard to the facts and circumstances of the case, we are of the considered opinion that interest of justice would be served by directing the office to place main Special Civil Application No.14580 of 2003 on the Board of learned Single Judge on 11.8.2004 at the top of the cause list. Learned Counsel Shri Shah for the respondents No.1 to 10 - original petitioners and learned Counsel Shri Maulin Raval for the Appellant Bank both assured this Court that they will remain present before the learned Single Judge on 11.8.2004 and will not ask for any adjournment and go on with the hearing of the main writ petition. On main writ petition i.e. Special Civil Application No.14580 of 2003 being placed on the Board of final hearing before the learned single Judge on 11.8.2004, we request the learned Single Judge to hear and decide the same as early as possible, after hearing the learned Counsel for the parties and considering the Division Bench Judgment of this Court in the case of RAMKARAN R. RAJPUT v/s. VIJAY CO.OP. BANK LTD., AHMEDABAD, reported in 1988 (2) GLR 1451, which is tried to be relied upon by learned Counsel Shri Raval before us.

7. We make it clear that the aforesaid order is passed by this Court, without expressing any opinion on the legality and validity of the order passed by the learned Single Judge and without giving opinion about the applicability of the Division Bench Judgment of this Court in RAMKARAN's case (supra), which was cited by Shri Raval for the Appellant Bank. It goes without saying that the learned Single Judge will take into consideration as to whether the said Judgment in the case of RAMKARAN (supra) would be applicable to the present case or not and the matter be decided strictly on merits and, in accordance with law.

In view of the above, this Appeal is disposed of with no order as to costs.

Civil Application No.7610 of 2003 will not survive in view of the order passed in main LPA. Accordingly, the same is disposed of.

(B.J.Shethna, J.)
Date : August 03, 2004
(M. C. Patel, J.)
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